FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR.

Second Appeal No. 228 of 2003
(Rupchand Shyamrao Borkar Vs. Smt. Vidya Shivshankar Gondane & ors.)

Appeal Application No. Writ petition	District : of 200

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's Orders

Mr. K.R. Lambat, Adv. for the appellant.
Mr. V.D. Muley, Adv. for R-1, 3 & 4.

CORAM : Smt. Vasanti A. Naik, J.
DATE : 29th August, 2007

Heard the learned counsel for the parties.

The appellant is the original plaintiff. A suit was filed by the plaintiff for permanent and mandatory injunction against the defendant. According to the plaintiff, there was a 5 ft. common lane between the houses of the plaintiff and the defendant, and the defendant had illegally made construction on the common lane. The plaintiff, therefore, sought permanent injunction restraining the defendant from obstructing the plaintiff in user of the lane and a mandatory injunction directing the defendant to demolish the illegal construction made on the common lane.

The defendant denied the claim of the plaintiff and pleaded that there was a lane between the houses of the plaintiff and the defendant, but the lane was not admeasuring 5' in width. According to the defendant, the lane was only 3' in width and 2' land on the side of the defendant's house was owned and possessed by the

defendant and, therefore, he was entitled to make construction on the 2' land belonging to the defendant.

The trial Court framed the necessary issues and after considering the evidence tendered by the parties on record, decreed the suit filed by the plaintiff. The defendant filed an appeal against the judgment and decree passed by the trial Court. The appellant Court re-appreciated the evidence tendered by the parties on record and held that the plaintiff had failed to prove that there was 5' lane existing between the houses of the plaintiff and the defendant. The first appellate Court further held that the plaintiff had failed to prove the contents of the sale deed as he had not issued notice to the defendant to admit the sale deed and secondly, the vendor of the sale deed was also not examined to prove that there existed 5' lane between the houses of the plaintiff and the defendant.

The findings recorded by the first appellate Court are pure findings of facts based on a proper appreciation of the evidence tendered by the parties on record. No substantial question of law arises for consideration in this second appeal.

Second appeal is, therefore, dismissed with no order as to costs.

JUDGE

RMP